

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DOUGLAS WARNEY,

Petitioner,

DECISION AND ORDER

04-CV-6202L

v.

SUPERINTENDENT MICHAEL MC GINNIS,  
MICHAEL GREEN, DISTRICT ATTORNEY OF  
MONROE COUNTY,

Respondents.

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This is a *pro se* habeas corpus action brought by petitioner Douglas Warney under 28 U.S.C. § 2254. In a letter to the Court dated August 8, 2006, counsel for respondent informed the Court that on May 16, 2006, Justice Thomas M. VanStrydonck of the New York State Supreme Court, Monroe County, issued an order vacating Warney's conviction, dismissing the indictment, and ordering his immediate release. A copy of Justice VanStrydonck's order is attached to counsel's letter.

Based on Justice VanStrydonck's order, respondent asks that Warney's petition, which relates to the vacated conviction, be dismissed as moot. Warney has not responded.

Respondent's request is granted. Since the underlying conviction has been vacated and the indictment dismissed, Warney's habeas claims have been rendered moot. *See Cumbo v. Eyman*, 409 F.2d 400, 400 (9<sup>th</sup> Cir. 1969) (habeas petition mooted by reversal of conviction); *Delgado v. Duncan*,


No. 02-CV-4929, 2003 WL 23185682, at \*5 (E.D.N.Y. Nov. 4, 2003) (dismissing as moot petitioner's claim that his conviction for criminal possession of a controlled substance should be dismissed, since petitioner had already received relief on this claim from the state Appellate Division, which vacated his conviction of that crime and dismissed the count from the indictment).

### CONCLUSION

Douglas Warney's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is denied as moot.

I decline to issue a certificate of appealability because Warney has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
August 25, 2006.